

ORDINANCE \_\_\_\_\_

ORDINANCE BANNING SMOKING IN ALL COUNTY FACILITIES AND  
ON ALL COUNTY PROPERTY

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WHEREAS, on May 19, 2009, the State of North Carolina passed "An Act To Prohibit Smoking In Certain Public Places And Certain Places Of Employment" amending Chapter 130A of the General Statutes and thereby authorizing local governments to adopt and enforce ordinances "that are more restrictive than State law and that apply in local government buildings, on local government grounds, in local vehicles, or in public places;"

WHEREAS, within said legislation the General Assembly finds "that secondhand smoke has been proven to cause cancer, heart disease, and asthma attacks in both smokers and nonsmokers. In 2006, a report issued by the United States Surgeon General stated that the scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke;"

WHEREAS, the Buncombe County Board of Health has reviewed this legislation and on June 11, 2009 adopted a resolution recommending that the County Commissioners adopt an ordinance "BANNING SMOKING IN ALL County facilities and on all County property." A copy of said resolution is attached and incorporated herein by reference as if fully set forth herein;

WHEREAS, Buncombe County is committed to providing a safe and healthy workplace in all County facilities for its employees and the visiting public and has long sought legislative authority to eliminate the potential for exposure to secondhand smoke on all County property;

WHEREAS, this Board is of the opinion that it is in the best interests of the citizens and residents of the County to amend County ordinances prohibiting smoking in certain areas and to make the recommended changes to the existing ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That the Code of Ordinances County of Buncombe, North Carolina is hereby revised as follows:

Sec. 50-1, Smoking in County buildings, is hereby repealed and replaced with the following:

**Sec. 50-1. Smoking prohibited in Buncombe County buildings, on Buncombe County grounds, or in Buncombe County vehicles.**

(a) *Authority.* This section is enacted pursuant to authority granted in said legislation titled "An Act To Prohibit Smoking In Certain Public Places And Certain Places Of Employment" and pursuant to the provisions of G.S. 153A-121 as an exercise of the police power to protect, promote and preserve the public health, welfare and safety of individuals in Buncombe County buildings, on Buncombe County grounds, or in local vehicles.

(b) *Definitions.* The following definitions apply to this section:

- (1) "Bar".- An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001.
- (1a) "Cigar bar". – An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001 that satisfies all of the following:
  - a. Generates sixty percent (60%) or more of its quarterly gross revenue from the sale of alcoholic beverages and twenty-five percent (25%) or more of its quarterly gross revenue from the sale of cigars;
  - b. Has a humidor on the premises; and
  - c. Does not allow individuals under the age of 21 to enter the premises. Revenue generated from other tobacco sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies the definition of cigar bar.
- (1b) "Employee". - A person who is employed by an employer, or who contracts with an employer or third person to perform services for an employer, or who otherwise performs services for an employer with or without compensation.
- (2) "Employer". - An individual person, business, association, political subdivision, or other public or private entity, including a nonprofit entity, that employs or contracts for or accepts the provision of services from one or more employees.
- (3) "Enclosed area". - An area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.
- (4) "Grounds". - An unenclosed area owned, leased, or occupied by State or local government.
- (5) "Local government". - A local political subdivision of this State, an airport authority, or an authority or body created by an ordinance, joint resolution, or rules of any such entity. As used in this section, "local government" shall be Buncombe County and any reference contained herein to "local government" shall be deemed to mean "Buncombe County."
- (6) "Local government building". - A building owned, leased as lessor, or the area leased as lessee and occupied by Buncombe County. As used in this section, "local government building" shall be Buncombe County building and any

reference contained herein to "local government building" shall be deemed to mean "Buncombe County building."

- (7) "Lodging establishment". - An establishment that provides lodging for pay to the public.
- (8) "Local vehicle". - A passenger-carrying vehicle owned, leased, or otherwise controlled by Buncombe County and assigned permanently or temporarily by Buncombe County to Buncombe County employees, agencies, institutions, or facilities for official Buncombe County business.
- (8a) "Private club". - A country club or an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1). For the purposes of this Article, private club includes country club.
- (8b) "Private residence". - A private dwelling that is not a child care facility, as defined in G.S. 110-86(3), and not a long-term care facility, as defined in G.S. 131E114.3(a)(1).
- (8c) "Private vehicle". - A privately owned vehicle that is not used for commercial or employment purposes.
- (8d) "Public Place". - An enclosed area to which the public is invited or in which the public is permitted.
- (8e) "Restaurant". - A food and lodging establishment that prepares and serves drink or food as regulated by the Commission pursuant to Part 6 of Article 8 of this Chapter.
- (9) "Smoking". - The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.
- (10) "State government". - The political unit for the State of North Carolina, including all agencies of the executive, judicial, and legislative branches of government.
- (11) "State government building". - A building owned, leased as lessor, or the area leased as lessee and occupied by State government.
- (12) "State vehicle". - A passenger-carrying vehicle owned, leased, or otherwise controlled by the state and assigned permanently or temporarily to a State employee or State agency or institution for official State business.
- (13) "Tobacco shop". - A business establishment, the main purpose of which is the sale of tobacco, tobacco products, and accessories for such products, that receives no less than seventy-five percent (75%) of its total annual revenues from the sale of tobacco, tobacco products, and accessories for such products, and does not serve food or alcohol on its premises.

(c) *Smoking prohibited.* No person shall smoke, carry or possess a lighted cigar, cigarette, pipe or other lighted smoking equipment or paraphernalia in any Buncombe County buildings, on Buncombe County grounds, or in Buncombe County vehicles.

(d) *No smoking signs and instructions.* The individual in charge of Buncombe County buildings, Buncombe County grounds, or Buncombe County vehicles or the individual's designee shall post signs in conspicuous areas of the building. The signs shall state that "smoking is prohibited" and may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. In addition, the individual in charge of the building or the individual's designee shall direct a person who is smoking inside the building, or on the grounds, or in a vehicle, or in public places to extinguish the lighted smoking product.

(e) *Exceptions.* This ordinance does not restrict or prohibit smoking in the following places:

- (1) A private residence.
- (2) A private vehicle.
- (3) A tobacco shop if smoke from the business does not migrate into an enclosed area where smoking is prohibited pursuant to this section. A tobacco shop that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the tobacco shop and smoke from the shop does not migrate into an enclosed area where smoking is prohibited pursuant to this section.
- (4) All of the premises, facilities, and vehicles owned, operated, or leased by any tobacco product processor or manufacturer, or any tobacco leaf grower, processor, or dealer.
- (5) A Designated smoking guest room in a lodging establishment. No greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking guest rooms.
- (6) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to the Article. A cigar bar that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar must satisfactorily report on a quarterly basis to the Department, on a form prescribed by the Department, the revenue generated from the sale of alcoholic beverages and cigars as a percentage of quarterly gross revenue. The Department shall determine whether any additional documentation is required of the cigar bar to authenticate or verify revenue data submitted by the cigar bar. This subdivision shall not apply to any business that is established for the purpose of avoiding compliance with the Article.
- (7) A private club.
- (8) A motion picture, television, theater, or other live production set. This exemption applies only to the actor or performer portraying the use of tobacco products during the production.

(f) *Penalty for violation of section.* Any person violating the provisions of this section shall be responsible for an infraction, and the person committing the infraction may be punished by a fine of not more than fifty dollars (\$50.00). Conviction of an infraction under this section has

no consequence other than payment of a penalty. A person smoking in violation of a local ordinance or other rules, laws, or policies adopted under this section may not be assessed court costs.

2. That this resolution shall be effective January 2, 2010.

This the 4th day of August, 2009.

ATTEST

BOARD OF COMMISSIONERS FOR THE  
COUNTY OF BUNCOMBE

\_\_\_\_\_  
KATHY HUGHES, CLERK

BY: \_\_\_\_\_  
DAVID GANTT, CHAIRMAN

APPROVED AS TO FORM

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COUNTY ATTORNEY